

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS

—
No. 6:22-cv-00104

—
Jason Irvin Kittrell,
Plaintiff,

v.
Sherry L. King et al.,
Defendants.

—

ORDER

Plaintiff Jason Kittrell, an inmate of the Texas Department of Criminal Justice, proceeding pro se, filed this lawsuit complaining of alleged deprivations of his constitutional rights. The case was referred to United States Magistrate Judge John D. Love.

Plaintiff paid the full filing fee and is not proceeding *in forma pauperis*. He must thus effect service of process on the defendants. On June 23, 2022, the magistrate judge ordered that process be issued and delivered to plaintiff for service. On October 14, 2022, the magistrate judge issued a show-cause order advising plaintiff that dismissal would be recommended unless plaintiff effected service within 30 days or showed cause why the case should not be dismissed. Plaintiff received a copy of this order on October 20, 2022, but did not respond.

On December 7, 2022, the magistrate judge issued a report recommending that the case be dismissed without prejudice for failure to effect service of process and failure to comply with a court order. A copy of that report was mailed to plaintiff at his last known address, and no objections were filed. The Fifth Circuit has explained that when a letter is properly placed in the United States mail, a presumption exists that the letter reached its destination in the usual time and was actually received by the person to whom it was addressed. *Faciane v. Sun Life Assurance Company of Canada*, 931 F.3d 412, 420–21 and n.9 (5th Cir. 2019).

When there have been no timely objections to a magistrate judge's report and recommendation, the court reviews it only for clear error. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1420 (5th Cir. 1996). Having reviewed the magistrate judge's report and being satisfied that it contains no clear error, the court accepts its findings and recommendation. Plaintiff's claims are dismissed without prejudice for failure to effect service of process and failure to obey an order of the court.

So ordered by the court on January 25, 2023.



J. CAMPBELL BARKER
United States District Judge